

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

PATRICIA MICHAELS)	
)	
Plaintiff,)	
)	Case No.
vs.)	
)	
)	
WAL-MART STORES EAST I, L.P. and)	
RAY SCOTT,)	
Defendants,)	

NOTICE OF REMOVAL

COMES NOW Defendant Wal-Mart Stores East I, L.P., with full reservation of all defenses, objections and denials, including but not limited to service, jurisdiction, venue, and statute of limitations, and hereby removes the above-captioned matter from the Circuit Court of Jackson County, Missouri, to the United States District Court for the Western District of Missouri, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. In support thereof, Defendant states the following:

I. PROCEDURAL REQUIREMENTS

1. Plaintiff Patricia Michaels filed the instant lawsuit against Defendant Wal-Mart Stores East I, L.P. (hereinafter “Defendant Walmart”), in the Circuit Court of Jackson County, Missouri, Case No. 2116-CV05640, on March 10, 2021.

2. Defendant Walmart was served with the Petition for Damages on May 7, 2021. Defendant Walmart has not yet answered Plaintiff’s Petition for Damages.

3. As required by 28 U.S.C. § 1446(a), a copy of all records and proceedings from the Circuit Court of Jackson County, Missouri, are attached hereto as Exhibit A.

4. This Notice of Removal is properly directed to this Court pursuant to 28 U.S.C. § 1446(a) as it is the United States District Court embracing the District Court of Jackson County,

Missouri, where Plaintiff's Petition for Damages is currently pending. *See* 28 U.S.C. § 96.

5. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) because the same has been filed within thirty (30) days of service.

6. Pursuant to 28 U.S.C. § 1446(d), Defendant Walmart will file written notice of this removal with the Clerk of the Circuit Court of Jackson County, Missouri, where Plaintiff's Petition for Damages is currently pending. A copy of the notice is attached hereto as Exhibit B. A copy of this Notice of Removal and the written notice of the Notice of Filing Notice of Removal have been served upon Plaintiff.

II. DIVERSITY OF CITIZENSHIP

7. Upon information and belief, Plaintiff is a citizen of Missouri. *See* Exhibit A, Plaintiff's Petition for Damages, ¶ 1.

8. Defendant Wal-Mart Stores East I, L.P., is a Delaware Limited Partnership. The General Partner of Wal-Mart Stores East, L.P., is WSE Management, LLC. The limited partner of Wal-Mart Stores East, LP, is WSE Investment, LLC. The only member of WSE Management, LLC, and WSE Investment, LLC, is Wal-Mart Stores East, LLC. The only member of Wal-Mart Stores East, LLC, is Wal-Mart Stores, Inc. Wal-Mart Stores, Inc. is a Delaware corporation with its principal place of business in Bentonville, Arkansas. Thus, this Defendant is a citizen of Delaware and Arkansas.

9. Defendant Ray Scott is alleged to be a citizen of Missouri. *See* Exhibit A, Plaintiff's Petition, ¶ 3. However, Defendant Scott, is as of the time of the filing of this Notice of Removal a resident of Indiana and has been a resident of Indiana since mid-2019.

10. As Plaintiff is a citizen of Missouri, Defendant Walmart is a citizen of Delaware and Arkansas, and Defendant Scott is a citizen of Indiana, diversity of citizenship exists.

11. To date, Defendant Scott has not yet been served. *See* Exhibit A. Plaintiff has requested Defendant Scott to be served at the store where the incident occurred.¹ However, Mr. Scott is no longer employed at the store where the incident occurred.

12. It is not anticipated that Mr. Scott will be served prior to the removal of this matter. Therefore, Mr. Scott's consent to removal is not required. *See* 28 U.S.C. § 1446(b)(2)(A) ("When a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action.").

III. AMOUNT IN CONTROVERSY EXCEEDS \$75,000.00

13. Plaintiff has alleged she has suffered injury to her head, neck and shoulder. *See* Exhibit A, Plaintiff's Petition for Damages, ¶ 14. Plaintiff has alleged that she sustained a concussion. Exhibit A, Plaintiff's Petition for Damages, ¶ 14. Plaintiff has alleged that she has incurred medical expenses and experienced pain and suffering. Exhibit A, Plaintiff's Petition for Damages, ¶ 14.

14. Where a plaintiff alleges no specific amount of damages or an amount under the jurisdictional minimum, the removing party "must prove by a preponderance of the evidence that the amount in controversy exceeds \$75,000." *Drobnak v. Andersen Corp.*, 561 F.3d 778, 786 (8th Cir. 2009). To satisfy the preponderance of the evidence standard, the party seeking removal must offer "some specific facts or evidence demonstrating that the jurisdictional amount has been met." *Hill v. Ford Motor Co.*, 324 F. Supp. 2d 1028, 1036 (E.D. Mo. 2004). Such facts can include "plaintiff's representations," or an "extensive list of serious and disabling injuries." *Miller v. CEVA Logistics*, 2008 U.S. Dist. LEXIS 2116 (W.D. Mo. 2008).

15. Here, Plaintiff has alleged she has suffered injury to her head, neck, and shoulder,

¹ *See* Exhibit A, Summons to Defendant Scott.

including a concussion. She is claiming medical expenses and pain and suffering.

16. Although Defendant denies liability, based upon Plaintiff's allegations in the Petition for Damages, the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. See 28 U.S.C. §1332(a).

WHEREFORE, based on the above and foregoing, Defendant Walmart removes this action from the Circuit Court of Jackson County, Missouri, to this Court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

Respectfully submitted,

/s/ Tracy M. Hayes

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**ATTORNEYS FOR WAL-MART
STORES EAST I, L.P.**

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of June, 2021, the foregoing was filed with the Clerk of the Court using the CM/ECF system, which will send notice of electronic filing to all counsel of record.

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